different treatment than any other. Another reason advanced is that the executory devise is bad because conditioned on an event entirely within the control of the holder of the previous estate.[4] Exactly the same thing is true of many admittedly valid devises, for example a devise conditioned on the previous holder's remaining single. Again it is said that an executory devise cannot be limited to take effect at the very moment of the ending of the fee which it terminates. This also is not true. In fact most executory devises do vest at that time, as would happen for example where an estate is given to A in fee, and if he dies without issue living at his death, over to B.

That there is nothing fundamental in the objections to such limitations is evident from the fact that the courts are perfectly willing to allow the same result to be accomplished in another way, namely, by a gift to A for life with power to dispose of the property by deed or will, remainder over.[5] So it seems that this rule is founded on no substantial reason, but on the merest technicality, since it is possible to accomplish the same result by a change of phrase. It has nevertheless become generally established. It is an instance, unusual in modern law, of a rule, founded on no considerations of public policy, which overthrows the intention of the parties, when the language used is most appropriate to accomplish the desired result.[6]

NECESSITY OF NOTICE TO VOTERS. — It is a general rule of statutory construction that where the time and place of a meeting or election are set by statute, provisions as to the notice which must be given to voters are merely directory, the notice being in that case merely for further information. The right to vote comes from the statute, and should not be lost through the negligence of those officers whose duty it is to publish the notice.[1] But if either the time or the place of the meeting is not fixed by law, so that further notice is essential to enable the voter to act, these statutory provisions are usually regarded as mandatory.[2] So New England town meetings are held illegal if the provisions for notice have not been literally performed.[3] This doctrine has been carried so far that when the time of meeting has been inadvertently omitted from the notice recorded, it cannot be shown that it was in fact contained in the notices posted, nor is evidence that all the legal voters were present competent to render the acts of such a meeting legal.[4] The warrant containing the notice is regarded as the authority for the meeting, and must be strictly according to law.

It is evident that such a construction may frequently cause the will of the people to be defeated by the technical omission of some official. A recent New Jersey case shows to what extent a court will go to avoid this unfortunate result. The prosecutor was present and voted without protesting at the annual meeting of a street lighting district, for which the notice had not been posted for the statutory period of ten days. It was not shown that any

---

[4] Jackson *v.* Robins, 16 Johns. (N. Y.) 537.
[5] Stuart *v.* Walker, 12 Me. 145.
[6] See Gray, Res. on Alien. 48.

[1] People *v.* Cowles, 13 N. Y. 350; State *v.* Lansing, 46 Neb. 514.
[2] Cooley Const. Lim., 7th ed. p. 909.
[3] Commonwealth *v.* Smith, 132 Mass. 289.
[4] Sherwin *v.* Bugbee, 17 Vt. 337.

voters had failed to receive notice of the meeting. The court held that the prosecutor was estopped from questioning its regularity. *Brown* v. *Street, etc., of Woodbridge*, 55 Atl. Rep. 1080 (N. J., Sup. Ct.). Here, although the time was set by law, the place was left to be determined by the notice, so that by the strict construction of the New Jersey courts[5] any irregularity in the notice would be fatal. The court therefore was forced to take refuge in the doctrine of estoppel to defeat the action. Such a course is very hard to support in the absence of anything showing that the prosecutor knew of the irregularity of the notice when he participated in the meeting.[6]

It would seem to be wiser policy to avoid such technical distinctions and to regard these provisions for notice as directory in all cases. Their violation should make the vote illegal only when harm actually results. This has long been the view in New York and Iowa,[7] and has been followed elsewhere.[8] In case of an election it ought not to be enough to show that one or two voters have lost their votes. If the great body of electors voted, the election should not be set aside unless it is apparent that the result might have been changed had they all voted.[9] This is in accord with those numerous cases which hold that an election should not be set aside for irregularities which do not affect the result.[10] A meeting, however, requires a stricter test, as one man might, by voicing his views, influence the result. The proceedings therefore should be set aside if the complainant himself was prevented from attending. In either case it is the harm caused by the defective notice, and not the defective notice itself, which should render the action of the voters illegal.

ENFORCEMENT OF OBLIGATIONS IMPOSED BY FOREIGN CORPORATION LAWS. — In a foreign jurisdiction judgment will be granted only on those obligations which are remedial rather than penal.[1] In enforcing a penal obligation the state as sovereign punishes an individual. This the sovereign can do only within its own jurisdiction. Nor does the fact that a benefit inures to an individual from such punishment necessarily prevent its being penal. For instance, the obligation to pay exemplary damages is regarded as penal.[2] It is often, however, a matter of some difficulty to say whether or not an obligation is of this class. In this respect certain cases where liability is imposed by the corporation law of a foreign jurisdiction appear to have given the courts peculiar trouble. That corporations doing business in a foreign jurisdiction may not escape wholesome restrictions imposed by the corporation laws of the state creating them, it is well that the obligation should not be declared penal unless such an intent on the part of the legislature clearly appears. Some obligations, however, are necessarily penal. Thus if the obligation is imposed without reference to the resulting damage, it is submitted that it must be regarded as a punishment. If, on the other hand, the extent of the liability imposed is made to correspond to the

---

[5] Canda M'f'g Co. *v.* Woodbridge, 58 N. J. Law 134.
[6] School District *v.* Atherton, 12 Met. (Mass.) 105.
[7] People *v.* Peck, 11 Wend. (N. Y.) 604; Dishon *v.* Smith, 10 Ia. 212.
[8] Seymour *v.* City of Tacoma, 6 Wash. 427.
[9] Adsit *v.* Secretary of State, 84 Mich. 420.
[10] Fry *v.* Booth, 19 Oh. St. 25; Sprague *v.* Norway, 31 Cal. 173.

[1] Blaine *v.* Curtis, 59 Vt. 120.
[2] *Ibid.*